

REMARKS

Upon entry, claims 1-23 remain pending for further proceedings. Several of the claims have been amended to simplify their examination, without intent of the Applicants to abandon any subject matter that is no longer present in those claims. Applicants expressly retain the right to claim any of their disclosed subject matter, in this or a continuing application.

The original claims were subject to a restriction requirement, having been grouped as follows:

- I. Claims 1-7 and 21, to a tablet.
- II. Claim 8, to tablets in a capsule.
- III. Claims 9-13 and 22, to particles in a capsule.
- IV. Claims 14-20 and 23, to a process.

By the present amendments, all of the claims now are directed to pharmaceutical dosage forms that comprise a tablet, or the production thereof. The only independent claim is claim 1.

Applicants initially point out that the limitation in claim 1 including "a tablet," according to established law, encompasses one tablet and more than one tablet. See, for example, *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1355 (Fed. Cir. 2000): "This court has repeatedly emphasized that an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" Therefore, the restriction of Groups I and II was incorrect and remains inappropriate for the presently amended claims.

The inventive concept determination procedure under the PCT is described in MPEP § 1850: "With respect to a group of inventions claimed in an international application, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features;" and "Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By 'dependent' claim is meant a claim which contains all the features of one or more other claims and contains a reference, preferably at the beginning, to the other

claim or claims and then states the additional features claimed." Applicants respectfully submit that the USPTO classification system is not relevant to this procedure.

In the presently amended claims, each of claims 2-23 incorporates, directly or indirectly, all of the limitations of claim 1. The presence of a single inventive concept should be presumed, in the absence of evidence that a unifying concept is not patentable. According to MPEP § 1850, "If . . . there is a single general inventive concept that appears novel and involves inventive step, then there is unity of invention and an objection of lack of unity does not arise."

Withdrawal of the restriction requirement is appropriate, as it is not in compliance with prescribed procedure from the MPEP. However, if the requirement is maintained, Applicants provisionally elect their composition claims (claims 1-13, 21, and 22) for the initial examination, with the understanding that process claims 14-20 and 23 will also be examined upon determining that the composition claims are allowable.

If any matters remain to be resolved in connection with this submission, and an interview is considered to be appropriate, please contact the undersigned by telephone to accelerate resolution.

Respectfully submitted,

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August 9, 2010

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